

**BEFORE THE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL BY THE COMMISSIONER OF REVENUE**

In the Matter of	)	
	)	
Z P	)	OAH No. 19-0388-PFD
	)	Agency No. 2018-007-1016
<u>2018 Permanent Fund Dividend</u>	)	

**DECISION**

**I. Introduction**

Z P is a 50-year-old woman who lived in Alaska in 2016 and at least part of 2017, but is currently located in California. This case relates to her application for a 2018 Permanent Fund Dividend (PFD).

In the course of the application review and informal appeal process, the Permanent Fund Dividend Division determined that Ms. P was ineligible for a variety of reasons. Two reasons that are relatively straightforward to review here are (1) that she registered to vote in California during the qualifying year for her 2018 PFD, and (2) that she was absent from the state for too much of the qualifying year. A short formal hearing took place on June 11, 2019, in which these two issues were explored. Because they resolve the case, it is not necessary to reach the other reasons that Ms. P may be ineligible. The Division’s decision will be affirmed.

**II. Facts**

The key facts in this case are not in dispute. Z P traveled from Alaska to California on January 23, 2017, returning to Alaska on March 8, 2017 (44 days). The purpose of this travel was “visiting family.”<sup>1</sup> She again traveled to California on June 29 or 30, 2017, returning to Alaska on October 19, 2017 (111 days). The purpose of this travel was meeting with her attorney.<sup>2</sup> She again traveled to California on November 29, 2017, remaining there through the end of the year (32 days). The reason for the third trip was that an aunt had passed away.<sup>3</sup>

On October 18, 2017, Ms. P registered to vote in Santa Clara County, California.<sup>4</sup>

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<sup>1</sup> Ex. 1, p. 4; testimony of Ms. P.

<sup>2</sup> Ex. 1, p. 4; testimony of Ms. P. The June 30 date (from testimony) will be used.

<sup>3</sup> Testimony of Ms. P.

<sup>4</sup> Ex. 8, p. 5; testimony of Ms. P.

In the hearing, Ms. P was completely honest about her actions, disclosing absences and voter registration frankly when asked about them. She is unfamiliar with the details of PFD eligibility, and wants an independent review of whether she is eligible.

### III. Discussion

#### A. *Excessive Absence*

The qualifying year for the 2018 dividend was 2017.<sup>5</sup> In order to qualify for a PFD, the applicant must have been physically present in Alaska all through the qualifying year, or only have been absent for one of the 17 allowable reasons listed in a statutory section entitled “Allowable Absences,” AS 43.23.008.<sup>6</sup> In general, these cover such things as absences under military orders or absences to care for a terminally ill family member.

There is only one of the allowable absences that potentially applies to P. It is the so-called catchall provision, covering absences for “any reason consistent” with Alaska residency. Vacations, business trips, funeral trips, family visits, and the like fit under this absence. However, absences for this open-ended reason cannot have exceeded 180 days under any circumstances.<sup>7</sup> Since Ms. P was absent in 2017 for at least 187 days, this allowable absence cannot save her eligibility for the dividend.

#### B. *Registering to Vote*

A common source of appeals in PFD cases is the population of Alaskans who register to vote or vote in other states, and then learn, to their regret, that their actions have disqualified them from a PFD. Ms. P apparently just wanted to do her civic duty. The language of the regulation and its prior interpretations do not allow for consideration of good motives, however.

The applicable regulation is 15 AAC 23.143(d), which reads in relevant part:

An individual is not eligible for a dividend if, any time from January 1 of the qualifying year through the date of application, the individual

\* \* \* \* \*

(12) registered to vote in another state or country . . . ,

There are two exceptions to the regulation, one applying to the period right before a presidential election, and the other applying to certain kinds of registration in foreign countries. Neither of them applies to Ms. P.

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<sup>5</sup> AS 43.23.095(6).

<sup>6</sup> AS 43.23.005(a)(6).

<sup>7</sup> AS 43.23.008(a)(17)(A).

The Alaska Supreme Court has upheld the authority of the Department of Revenue to create such regulations in order to streamline the PFD program and ease the administrative burdens of determining eligibility.<sup>8</sup> The regulation at issue in this case calls for denial based on a single verifiable act, without further inquiry into the applicant's status as a resident. Because of her voter registration in California in 2017, Ms. P was not eligible for a 2018 dividend.

#### IV. Conclusion

Because Z P registered to vote in California in 2017, and because she was unallowably absent from Alaska for too large a portion of 2017, she is not eligible for the 2018 PFD. The decision of the Permanent Fund Dividend Division to deny her application for a 2018 Permanent Fund Dividend is AFFIRMED.

DATED this 11<sup>th</sup> day of June, 2019.

By: Signed  
Christopher Kennedy  
Administrative Law Judge

#### Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 9<sup>th</sup> day of July, 2019.

By: Signed  
Signature  
Christopher Kennedy  
Name  
Administrative Law Judge  
Title

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<sup>8</sup> *Church v. State of Alaska; Department of Revenue*, 973 P.2d 1125, 1128-9 (Alaska 1999); *Casio v. Department of Revenue*, 858 P.2d 621, 625 (Alaska 1993) (“commissioner has the authority to promulgate a regulation excluding permanent fund dividend applicants who arguably fall within the statutory definition of eligible applicants”).

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]